IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2749 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOMAIYA LIMBA

Versus

STATE OF GUJARAT NOTICE TO BE SERVED THROUGH

Appearance:

1. Special Civil Application No. 2749 of 1988

MR PH PATHAK for Petitioner No. 1-2

MS. MANISHA LAVKUMAR, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 09/04/2004

ORAL JUDGEMENT

#. This petition under Article 226 of the Constitution is stated to have been filed as a Public Interest

Litigation for the exploited daily wagers whose details are given at Annexure:A. The prayers are to the effect that the respondents should be directed to treat the petitioners mentioned at Annexure:A as regular employees of the respondent-department from the date of their initial appointment, to grant them time-scale of pay and all other benefits of Class-IV employees from the initial date of appointment and to pay all arrears with 12% interest, or in the alternative, to direct the respondents to frame a scheme of regularisation of the employees who have completed 360 days in service, and to extend benefits of equal pay for equal work. Apparently, while the petition is filed in the name of one person and a Trade Union through its Treasurer, the reliefs are claimed for 34 persons named at Annexure:A, making them real petitioners. After obtaining interim relief restraining the respondents from discharging the petitioners from service, a further direction to pay minimum of Rs. 35/- per day as and when the work is taken from the persons concerned, is also obtained by the interim order dated 23.11.90.

#. According to the affidavit-in-reply filed by the Deputy Director, Animal Husbandry, Cattle Breeding Farm the respondent no. 2, the petition is filed in the guise of a Public Interest Litigation for the members of the petitioner no. 2 - Union and several important questions of disputed fact are involved in the matter. It is stated that the petitioners or the workmen concerned, have an alternative efficacious remedy. That the workmen concerned who are the real petitioners have not been appointed against any permanent post and the concept of equal pay for equal work does not apply in the facts of the present case. The details of service of several persons as given in Annexure:A are specifically denied, as also the claim of continuity of service. All other major contentions on the basis of which the petition has been filed, are denied.

#. The learned counsel for the petitioners stated that during the long pendency of this matter for 16 years in the court, not only that the workmen concerned have not been discharged, but appropriate reliefs in the nature of regularisation have been extended to the eligible workmen as provided in the resolution dated 17.10.88 of the government based upon the recommendations of Daulatbhai Parmar Committee.

#. In view of the fact that the factual averments on which the petition is based are not admitted, disputed questions of fact have been raised and the fact that the

workmen concerned have admittedly been extended benefits at par with the other similarly situated employees, as also in view of the legal position that this Court cannot order regularisation of service disregarding the number of posts available, the qualifications prescribed therefor, vacancies and the fulfillment of other eligibility criteria, the petition is liable to be dismissed. Accordingly, the petition is dismissed, Rule is discharged with no order as to costs and interim relief is vacated.

[D.H. WAGHELA, J.]

pirzada/-